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9 **IN THE SUPREME COURT**

10 **STATE OF ARIZONA**

11 In the Matter of:

12 **PETITION TO AMEND ER 1.6 (d),**
13 **RULE 42, ARIZ. R. SUP. CT.**

Supreme Court No. R-

PETITION

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15 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the
16 undersigned petitions the Supreme Court to amend ER 1.6(d) as set forth in
17 Exhibit A. The proposed amendment provides for an exception which allows
18 Adoption Service Providers to disclose pertinent information regarding a
19 birthmother if said disclosure may not only lead to the prevention of fraud, but it
20 might also aid in the mitigation of any damages incurred as a result of said fraud.
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22 This proposed amendment could help protect both the emotional and financial
23 investment of an adopting family.
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25 **THE PROBLEM**

26 The adoption process is an area of law burdened by the possibility of fraud.
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28 This is aggravated by the fact that the community of women who utilize adoption

1 services oftentimes hail from volatile social situations. Opportunists often exploit
2 the emotional aspects of adopting a child for the purpose of financial gain. For
3 example, there have been many situations whereby a pregnant woman, who has no
4 real intention of placing her child for adoption, will seek out and retain adoption
5 services. As is such, she will allow an Adoption Service Provider to case manage
6 her throughout the pregnancy, match her with a wanting adoptive family, and
7 provide her with monthly living expenses and medical care. After delivering the
8 child however, the birthmother will claim her right to change her mind before
9 signing adoption consents. She will do so time and time again, with each new
10 pregnancy, switching each time to a different Adoption Services Provider.
11 Knowing that it is her legal right to change her mind, and having no regard for a
12 potential adopting family, this woman will use her pregnancy and the promise of
13 adoption as a means to an income. Without being privy to this woman's fraudulent
14 past, each new unsuspecting adopting family or Adoption Service Provider falls
15 victim to her schemes.

21 Another example of fraud can be found in women who work with multiple
22 Adoption Services Providers while promising her child to multiple families. There
23 have been many known instances of women who actually intend to place their
24 child for adoption, however, illegally retain the services of several different
25 Adoption Service Providers. These agencies, unknowingly match said birthmother
26 with an adoptive family who provides her financial assistance with the
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1 understanding that the family will be adopting her unborn child. Meanwhile, the
2 birthmother has made the same assurance to several families and, in turn, has
3 illegally obtained large sums of money under the guise of living expense
4 necessity. Sometimes these mothers will contact additional agencies outside of
5 their residing state to further the scope of their victims. These various families and
6 Adoption Service Providers have no general means of communication to confirm
7 that a birthmother has not obtained adoption services elsewhere. Though the
8 birthmother may eventually place her child with one of the families she has been
9 receiving support from, several other families will have been manipulated and
10 robbed of both their emotional and financial investment.
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13 In addition to lack of intent and retaining numerous families, fraud can be
14 perpetrated in instances when a birthmother is not even pregnant. Sadly, there are
15 entire companies and websites whose sole purpose is to sell items and information
16 that allow a woman to fake a pregnancy. These companies can either sell actual
17 pregnancy urine to pass an administered pregnancy test or they can just provide
18 fake positive pregnancy tests, bogus proof of pregnancies seemingly provided by a
19 healthcare professional, false medical records, stock ultrasounds and pregnant
20 belly prosthetics all designed to fake a viable pregnancy. Armed with these
21 resources any woman can present herself to an Adoption Service Provider as
22 pregnant with the intent to place a child for adoption, be matched with a family or
23 numerous families, and effectively con people out of living expenses by assuring
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1 them that it is her intent to place her child for adoption. By the time an Adoption
2 Service Provider begins to suspect that something may be amiss, the "birthmother"
3 has disappeared and has moved on to her next victim or victims. Even in instances
4 where a birthmother was actually pregnant but suffered a miscarriage, oftentimes
5 that birthmother will continue to knowingly accept living expenses from her
6 Adoption Services Provider misleading them to believe that an adoption is still
7 possible.
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10 Fraud can also occur during the course of an adoption when a birthmother
11 fails to provide known information or provides misinformation regarding all
12 potential biological fathers to the child. There have been many known instances
13 where a birthmother will either fail to name a birthfather or she will provide the
14 name of a man different than that of the actual potential birthfathers. Oftentimes
15 she will do this to prevent the birthfather from learning of the pregnancy and
16 thereby participating in the adoption. However, by failing to name all potential
17 biological fathers, the birthmother fails to provide the critical information needed
18 to ensure that the rights of any and all potential biological fathers are legally
19 severed under the rules set out by the Arizona Revised Statutes. This can lead to a
20 disruption in the adoption, if not an eventual reversal. These situations often cost
21 adopting families to incur large amounts of legal fees to remedy the matter or, in
22 extreme cases, can cost the family the entire adoption.
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1 Birthmothers have also been known to fraudulently misrepresent their own
2 financial situations to Adoption Service Providers. Living expenses are provided
3 to a birthmother when she is unable to work as a result of the pregnancy. The
4 expenses must be reasonable and pregnancy related. However, there have been
5 instances where a birthmother fails to provide financial information that would
6 offset her qualification for expenses. Additionally, there have been known
7 instances where a birthmother has, in fact, been employed and collecting an
8 income, yet hides that income from her Adoption Service Provider so as to
9 seemingly qualify for a full allotted amount of living expenses. This results in an
10 adopting family providing the birthmother with an amount of living expenses that
11 are not only unnecessary, but which allow her to illegally financially gain from
12 the adoption process. While this birthmother may likely still place her child for
13 adoption with the adopting family, her fraudulent behavior places an unnecessary
14 financial strain on that family.
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20 **THE RULE AS IS**

21 There are no viable means of holding a birthmother accountable for
22 fraudulent activity. There is no system in place that allows Adoption Service
23 Providers to either mitigate or prevent fraud from occurring. However, the ability
24 for Adoption Service Providers to disclose to one another information with regard
25 to known or suspected fraudulent birthmothers, fraud would provide a measure of
26 accountability. Currently ER 1.6(d) only permits the disclosure of confidential
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1 information if any damages that occurred as a result of the fraud can be feasibly
2 mitigated. Oftentimes, and as the fraudulent activity is usually perpetrated by
3 someone without the financial means to mitigate the damage, this type of
4 disclosure is useless. However, a perpetrator's financial inability to mitigate the
5 damages caused by the fraud should not disavow them of accountability.
6 Furthermore, the inability to mitigate current damages should not hinder the ability
7 to prevent further damage. Many times, because there is no accountability, the
8 birthmother will attempt the same fraudulent actions over and over again. In one
9 instance, an agency discovered that a mother had been working with five families
10 at one time. No one was able to provide any information to law enforcement and
11 thus she was never prosecuted. Even more disturbing was the fact that only a few
12 months later, when she was pregnant with yet another child, her name was coming
13 up on the adoption scam boards. People knew it and could not warn anyone.

18 **THE RULE AS AMENDED**

19 The amended Rule would allow, in the event of suspected or confirmed
20 multiple representation, discontinued services, or misrepresentation, for an
21 Adoption Service Provider to contact and release as much information as
22 necessary to any other Adoption Service Providers or adopting family for the
23 purpose of mitigating or preventing fraud. The disclosure of this information is
24 vital to properly assessing the motives, means and intentions of a prospective
25 birthmother. This could in turn, prevent a prospective adoptive family from
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1 becoming involved with a birthmother who they felt had too many previous
2 indiscretions or who they felt had questionable intentions regarding the adoption.
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4 Knowing that a potential birthmother has a history of placement failures, has
5 worked with multiple families, or has a history of faking pregnancy could prevent
6 an adoptive family from accepting a match with that birthmother that could
7 possibly leave them in emotional and financial ruin.
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9 In addition, if a birthmother was made aware that her information was going
10 to be disclosed to any and all future adoption service providers, it may prevent her
11 from constantly switching between providers in search of the least amount of
12 accountability and the most amount of funding. Knowing that the she was going to
13 be held accountable for the information she provides and that this information
14 would follow her from one adoption service provider to the next might deter her
15 from jumping from agency to agency or attorney to attorney in the hope that she
16 can continue spreading misinformation, misrepresenting herself or engaging in
17 other fraudulent behavior.
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21 Adoption Service Providers attempt to reduce fraud as much as possible.
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23 They do investigations on their birthmothers at the beginning of, and throughout
24 the pregnancy. Once potential fraudulent activity is discovered the birthmother is
25 questioned as to her actions or the information that she disclosed. However, this is
26 not enough. In many instances, the birthmother will get angry and just leave the
27 agency trying to prevent fraudulent activity. She then goes to the next
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1 unsuspecting agency or attorney down the road. The rule, as it is allows, for this
2 to happen. It is extremely hard to sit back when another entity contacts you or
3 when you see her name on adoption scam boards, and there is nothing that you can
4 say or do.
5

6 The amended Rule would also allow for an Adoption Service Provider to
7 maintain and share their birthparent database with other entities. Another entity
8 could be forward before it matches an unsuspecting adopting family. It would also
9 allow an Adoption Service Provider to contact and release as much information as
10 necessary to an attorney, local police, the county attorney, or attorney general for
11 purposes of seeking civil or criminal remedies. This would be critical in
12 prosecuting the birthmother for her fraudulent activities and possibly mitigating
13 the damages caused by said fraud. The more information gathered and provided to
14 a prosecuting attorney, the more concrete case which can be built to realize justice
15 for those who have been damaged.
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17 Coincidentally, while preparing this Petition, one of the agencies that
18 counsel represents, met with a birthmother who was seeking their services. Upon
19 a review of their files, they discovered that she previously came to the agency and
20 abruptly discontinued services. A year later, she returned under a fictitious name.
21 The agency reminded her of her previous actions and refused to provide services.
22 Unfortunately, there is no current mechanism in place to warn the next
23 unsuspecting agency or attorney that may encounter this same birthmother and
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1 knowing that she will more than likely cause a potential adoptive family severe
2 financial and emotional distress is extremely disturbing.
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4 CONCLUSION

5 Adoption Service Providers, and through them, adoptive families, have the
6 right to any and all information which would provide them the opportunity to
7 make an educated and informed decision as to who they match with in an
8 adoption. If Adoption Service Providers can prevent harm through the disclosure
9 of information, then that disclosure becomes acceptable and necessary. Further,
10 if disclosure can lead to the prosecution of a fraudulent birthmother then perhaps
11 families who have been harmed can at least mitigate some of their financial
12 damages. Or, at the very least, they could take solace in the fact that birthmothers
13 might be held accountable for intentionally robbing them of their financial and
14 emotional investment.
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18 RESPECTFULLY SUBMITTED this 7th day of January, 2016.
19

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25 Electronic copy filed with the
26 Clerk of the Arizona Supreme Court
this 7th day of January, 2016.

27 By:

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28

EXHIBIT A

E.R. 1.6(d) 8:

A licensed Adoption Service Provider may share their birthparent database with other licensed Adoption Service Providers anywhere within the United States for the purpose of preventing or mitigating fraudulent birthparent activities.

(1) The following information from a licensed Adoption Service Provider's database is permitted to be disclosed:

i. First names of the birthmother, all potential birthfathers, and/or legal father if applicable

ii. First two initials of birthmother, all potential birthfathers, and/or legal father's last name

iii. City and state of birthmother, all potential birthfathers, and/or legal father's residence

iv. Ages of birthmother, all potential birthfathers, and/or legal father if applicable

v. Due date (month/year)

vi. Name of Adoption Service Provider

vii. Date representation/assistance of birthmother began

viii. Date representation of birthmother ended

ix. Reason representation ended

(2) In the event of suspected or confirmed multiple representation, discontinued services, misrepresentation, or lack of disclosure, an Adoption Service Provider may contact and release as much information as necessary to any other Adoption Services Providers or adopting families for the purpose of mitigating or preventing fraud. Information released by an Adoption Service Provider directly to an adopting family shall be limited to the full names of the birthparents and the names of all Adoption Service Providers involved.

(3) An Adoption Service Provider or adopting family may contact and release as much information as necessary to an attorney, local police, the county attorney, or attorney general for purposes of seeking civil or criminal remedies.

(4) An Adoption Service Provider is any adoption attorney or adoption agency representing or assisting a birthmother or adopting family.